

Appl. No. 10/774,430
Amendment dated: March 11, 2005
Reply to OA of: December 15, 2004

REMARKS

Applicant notes that claim 2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Official Action and to include all of the limitations of the base claim and any intervening claims. Accordingly, Applicant has amended the claims by incorporating the limitations of claim 2 into claim 1 thereby making claim 1 allowable and in an effort to expedite the prosecution to early allowance.

In addition, claims 1 and 3-5 have been amended as suggested by the Examiner to more particularly define the invention. In this regard, Applicant very much appreciates the helpful suggestions provided by the Examiner in the Official Action. These suggestions have been followed in amending the claims to facilitate the prosecution to an early allowance. Accordingly, it is most respectfully requested that the objection to the claims and the rejection under 35 USC 112 be withdrawn.

All of the claims remaining in the application are dependent upon allowable subject matter and the amendment to claim 1 obviates the prior art rejection. It is believed that all of the claims now present in the application are allowable over the prior art because all the claims depend upon allowable claim 1.

The rejection of claims 1 and 5 under 35 U.S.C. 103 as unpatentable over Gustin in view of the prior art admitted by Applicant in Figs. 1-2 of the disclosure of the instant application has been carefully considered but is most respectfully traversed in view of the amendments to the claims.

Applicants wish to direct the Examiner's attention to the basic requirements of a prima facie case of obviousness as set forth in the MPEP § 2143. This section states that to establish a prima facie case of obviousness, three basic criteria first must be met. First, there must be some suggestion or motivation, either in the references

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themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Section 2143.03 states that all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants also most respectfully direct the Examiner's attention to MPEP § 2144.08 (page 2100-114) wherein it is stated that Office personnel should consider all rebuttal argument and evidence present by applicant and the citation of In re Soni for error in not considering evidence presented in the specification.

It is believed that amended claims 1 and 5 are allowable and thereby obviate this rejection. Accordingly, it is most respectfully requested that this rejection be withdrawn.

The rejection of claims 1 and 3-5 under 35 U.S.C. 103(a) as being unpatentable over Walls et al. in view of the prior art has been carefully considered but is most respectfully traversed in view of the amendments to the claims. It is therefore most respectfully requested that this rejection be withdrawn.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are

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most respectfully requested.

Respectfully submitted,

BACON & THOMAS, PLLC

By: Richard E. Fichter
Richard E. Fichter
Registration No. 26,382

625 Slaters Lane, 4th Fl.
Alexandria, Virginia 22314
Phone: (703) 683-0500
Facsimile: (703) 683-1080

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